

JOHN E. WILLIAMS

IBLA 75-109

Decided January 16, 1975

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer M-29939.

Affirmed.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Applications: 640-acre Limitation -- Public Lands: Riparian Rights

An oil and gas lease offer for less than 640 acres of land is properly rejected when the application fails to include adjoining, unsurveyed, nonnavigable river bed lands which were available for leasing at the time the offer was filed.

APPEARANCES: John E. Williams, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

John E. Williams has appealed from a decision of the Montana State Office, Bureau of Land Management, dated August 8, 1974, in which his offer to lease 33.93 acres of land in sec. 21, lot 4, and sec. 31, lot 2, T. 31 N., R. 5 W., M.P.M., Montana, was rejected. The lands described in appellant's lease offer were situated adjacent to Birch Creek. The State Office held that appellant's offer was violative of 43 CFR 3110.1-3(a) because it did not include a metes and bounds description of adjoining, unsurveyed, nonnavigable river bed lands which were available for leasing. <sup>1/</sup> The cited regulation directs that no offer may be made for less than 640 acres except where the offer is accompanied by a showing that the land is in an approved unit or cooperative plan of operation, or where the land is surrounded by lands not available for leasing. Duncan Miller, 7 IBLA 169 (1972).

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<sup>1/</sup> See 43 CFR 3101.1-4.

On appeal, Mr. Williams first urges that his description of the adjoining uplands was sufficient to encompass the river bed lands of the abutting stream. He then argues that the Department has not made it clear enough to potential lease offerors that they can file applications for lands under nonnavigable streams, and further points out that upon his analysis of the official oil and gas plat, he could not tell that the river bed was federal land available for leasing. Appellant has submitted metes and bounds descriptions of the adjoining nonnavigable river bed lands and requests that, in the event his appeal is disapproved, the Department consider his application as amended.

[1] We are not persuaded by appellant's arguments. The Department has long held that an oil and gas lease offer for less than 640 acres of land must be rejected where it appears that the offer does not include adjacent, unsurveyed, nonnavigable river bed lands which are available for leasing. Charles H. Fingerhood, A-30461 (March 17, 1966); Emily K. Connell, 70 I.D. 159 (1963); Halvor F. Holbeck, A-27704 (November 18, 1958); Halvor F. Holbeck, 62 I.D. 411 (1955). Such lands are not presumed to be included in the description of the adjoining uplands and must be separately described by metes and bounds. See Charles H. Fingerhood, *supra* at 2; Emily K. Connell, *supra* at 160. Accordingly, as appellant did not properly apply for the adjacent river bed lands and has not shown that such lands were not available for leasing when his offer was filed, the decision of the Bureau rejecting the offer on the basis of the 640-acre rule was proper. Our conclusion is not altered by the fact that the oil and gas plat does not indicate that the river bed lands belong to the United States. This same argument was presented in Emily K. Connell, *supra* at 162-63, and rejected as follows:

[T]here would be little information available in the Bureau for making a determination as to whether the overlying waters may or may not be navigable and hence as to whether the underlying lands are Federal or State lands. In fact, it would be rare if there was some notation on the land office records regarding the ownership of river bed lands. Nevertheless, the possible uncertainty of title in these circumstances cannot operate as an exception to the mandatory rule prescribed in the regulations \* \* \* when the regulation has not prescribed any such exceptions. Therefore, we are compelled to apply the 640-acre rule here regardless of any lack of notation on the land office records, where the Bureau has determined that the river bed land is Federal land available for lease and an applicant does not show that the determination was erroneous.

As noted above, appellant submitted a check for \$ 99.57 with his appeal to cover the first year's rental on the additional land. The Bureau of Land Management incorrectly returned appellant's check pending the outcome of this appeal. Appellant's application, as amended, can only be considered upon resubmission of the rental. Duncan Miller, A-27683 (November 10, 1958).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

